



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Number: **201024066**  
Release Date: 6/18/2010  
  
Date: March 23, 2010  
  
UIL: 501.06-00

Contact Person:  
  
Identification Number:  
  
Contact Number:  
  
Employer Identification Number:  
  
Form Required To Be Filed:  
  
Tax Years:

Dear \_\_\_\_\_ :

This is our final determination that you do not qualify for exemption from federal income tax under Internal Revenue Code ( hereafter "Code") section 501(a) as an organization described in Code section 501(c)(6 ).

We made this determination for the following reason(s):

You failed to show that you have any members, that you are supporting a line of business, and that no part of your earnings will inure to the benefit of any private shareholder or individual.

You must file federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

Please note that we have removed from our proposed adverse determination the name of the state in which you were incorporated along with the date of your incorporation, and in their place substituted the generic terms "State" and "Date."

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your

federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Robert Choi  
Director, Exempt Organizations  
Rulings & Agreements

Enclosure  
Notice 437  
Redacted Proposed Adverse Determination Letter  
Redacted Final Adverse Determination Letter



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Date: November 10, 2009

Contact Person:

Identification Number:

UIL: 501.06-00

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

Applicant =

State =

Date =

Dear :

We have considered Applicant's application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code of 1986, as amended (hereafter "Code"), as an organization described in section 501(c)(6) of the Code. Based on the information submitted, we have concluded that Applicant does not qualify for exemption under that section. The basis for our conclusion is set forth below.

The information Applicant submitted indicates that Applicant was incorporated under the laws of the State on Date. Applicant's Articles of Incorporation do not state the nature of the business or the purposes it conducts or promotes. Rather, Applicant stated in its letter dated July 30, 2009, that the line of business Applicant was established to further is the following:

The 'industry' that we serve is the internet media industry and the manufacturers that create devices for accessing that media. [Applicant] develops free software that is of benefit to any business, organization, or individual that wants to display (or provide access to) animated media, or streaming video, or real time video on the internet. Our software is designed to run on multiple operating systems, multiple microprocessors, and a variety of devices used to access internet content (from desktops to small hand held devices). Since our software is free of charge, and our source code is 100% within the public domain, (we retain no copyright and no patent ownership), it provides a great alternative to anyone wanting to provide access to animated internet content without the cost and legal headaches of proprietary software.

Applicant stated in its letter dated July 30, 2009, that Applicant engages in several activities to further the internet media industry. Specifically, Applicant stated that it engages in the following:

A fully functional open media infrastructure (comprised entirely of free software) does not currently exist. The activities of [Applicant] are intended to fill this gap so that the internet media industry has an alternative to the costs and headaches of proprietary media distribution software. Specifically, we are currently developing a free flash player that displays animation and video content on the web. We are also working on a companion server to that free flash player. Finally, we are striving to make our free flash player compatible with as many popular media websites as possible so that it is of maximum benefit to the industry. In addition to developing this software, we promote it via the [Applicant's website] and by attending and speaking at free and open source software conferences.

Applicant further stated in its letter dated July 30, 2009, that it supports its stated line of business, the internet media industry, by its intent to make grants. Specifically, Applicant stated that “[t]o date, [Applicant] has been engaged solely in the development and promotion of our software. We have not directed any resources at grant-making activities but would like to reserve the right to do so in the future. These future grants are likely to be in the form of student scholarships for attendance at free software developer conferences or general free and open source software conferences whether hosted by [Applicant] or other organizations.” [Emphasis added].

Applicant stated that it is a membership organization composed of three classes of dues paying members. Specifically, in its letter dated July 30, 2009, Applicant stated the following:

Annual dues were structured as follows: Platinum (\$200,000), Gold (\$100,000) and Silver (\$50,000). Platinum members were automatically offered a seat on our Technical Advisory Committee. Unfortunately, despite much effort, we have not succeeded in recruiting any corporate members with this fee structure...*therefore we have no members to date. All our revenue to date has come from grants and individual donations.* I don't know if this means we need to reapply as a 501c3 or not. Our inability to recruit corporate members is something that could not have been foreseen. In order to recruit corporate members, and particularly in this economic climate, we may need to significantly lower our annual dues. Alternatively, we may need to make membership available to individuals. [Emphasis added]

Applicant elaborated on how the fee structure for its membership class was determined and specifically, in its letter dated July 30, 2009, stated the following:

The annual dues structure for our membership classes was determined by estimating what corporations would consider to be a reasonable contribution (in the form of annual dues) in exchange for having a free flash player to replace proprietary flash. Since our software is designed to benefit all corporations in the internet media industry (small, medium,

and large) we offered three classes of membership with corresponding annual dues.

Along with the review of Applicant's 1024 application for tax exemption, we have also reviewed and considered the additional material Applicant submitted, including but not limited to its Articles of Incorporation, By-Laws, Membership Agreement, and software licenses.

Section 501(c)(6) of the Code exempts from federal income taxation business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues (whether or not administering a pension fund for football players), not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(6)-1 of the Income Tax Regulations (hereafter "regulations") provides that a business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons. An organization whose purpose is to engage in a regular business of a kind ordinarily carried on for profit, even though the business is conducted on a cooperative basis or produces only sufficient income to be self-sustaining, is not a business league.

Rev. Rul. 67-251, 1967-2 C.B. 196, holds that an organization seeking exempt status as a business league violated the prohibition against inurement when part of the net earnings of the league inured to the benefit of private individuals through the organization furnishing financial aid and welfare services to its members.

Rev. Rul. 83-164, 1983-2 C.B. 95, holds that a nonprofit organization whose primary activity is promoting the common business interests of users of one particular brand of computer does not qualify for exemption from federal income tax as a business league under section 501(c)(6) of the Code as the activity of the organization in promoting one brand of computer provides a competitive advantage to said brand at the expense of other brands in the industry and is not promoting a line of business but rather a particular product in said line of business.

In American Auto. Assoc. v Commissioner, 19 T.C. 1146 (1953), the Tax Court held that an automobile club, composed of individual motorists, automobile clubs, and commercial vehicle organizations, failed to meet the common business interest requirement where membership in the club, under its bylaws, was available to individual motorists without regard to business interests or activities.

In National Muffler Dealers Assn. v United States, 440 U.S. 472, 99 S. Ct. 1304, 59 L. Ed. 2d 519 (1979), the Supreme Court upheld the decision of the Court of Appeals and held that an organization whose membership consisted of franchisees of one particular brand of automobile muffler did not constitute a line of business within the meaning of section 501(c)(6) of the Code as the organization was promoting a particular product at the expense of others in the industry.

Under section 501(c)(6) of the Code, organizations that are business leagues are exempt from federal income taxation. The regulations go into greater detail and provide that a business league must be an association of persons having a common business interest, whose purpose must be to promote such common business interest, and whose earnings, if any, must not inure to the benefit of any private person. See, section 1.501(c)(6)-1 of the regulations.

A tax-exempt business league under section 501(c)(6) of the Code and section 1.501(c)(6)-1 of the regulations must be an association of persons having a common business interest. As a membership organization, membership support, both in the form of dues and involvement in the organization's activities, must be at a meaningful level. However, as Applicant stated in its letter dated July 30, 2009, Applicant has no members to date. Specifically, Applicant stated that "[u]nfortunately, despite much effort, we have not succeeded in recruiting any corporate members with this fee structure...therefore we have no members to date. All our revenue to date has come from grants and individual donations... Our inability to recruit corporate members is something that could not have been foreseen." Without members, an organization cannot be an association of persons having a common business interest and must fail as a business league under section 501(c)(6) of the Code. Applicant does state that it may allow individuals to become members in its organization. However, even if Applicant manages to secure individuals as members, it could still fail the membership test, as business league members must be organized to promote a common business interest and thereby must have a common business interest. As the Tax Court held in American Auto. Assoc. v Commissioner, 19 T.C. 1146, 1159 (1953), an automobile club failed to meet the common business interest requirement where membership in the club, under its bylaws, was available to individual motorists without regard to business interests or activities. Furthermore, Applicant reports that its operating revenue is comprised of donations from individuals and grants, but not any revenue from members. As a result of Applicant's failure to secure any members and any meaningful membership support, Applicant failed to establish that it is an association of persons having a common business interest as required under section 501(c)(6) of the Code and section 1.501(c)(6)-1 of the regulations.

A tax-exempt business league under section 501(c)(6) of the Code and section 1.501(c)(6)-1 of the regulations must also have as its purpose the promoting of a common business interest. Applicant states that the line of business it serves is the "internet media industry and the manufacturers that create devices for accessing the media." Although this is a very broad line of business, the interests of all members in a business league are to promote their line of business, with business defined broadly as almost any enterprise or activity conducted for remuneration. Applicant reported that its sole activity to date has been the development and promotion of its software. Applicant further reported that it furthers the internet media line of business by providing its software for free as an "alternative to the costs and headaches of proprietary media distribution software." As the Supreme Court stated in National Muffler Dealers Assn. v United States, 440 U.S. 472, 484, 99 S. Ct. 1304, 1310, 59 L. Ed. 2d 519 (1979), promoting a particular product at the expense of others in the industry is not promoting a line of business. Whereas in Rev. Rul. 83-164, supra, the Service holds that an association of users of a single brand of computer, who were organized to develop and disseminate information about this particular brand of computer, were not promoting a line of business but were promoting a product. Similar to National Muffler Dealers Assn., id. at 484, 99 S.Ct. at 1310, and Rev. Rul. 83-164, supra, Applicant's activities are directed solely toward promoting the development and distribution of its own software—a particular product—rather

than a particular line of business. Applicant did not report engaging in any other meaningful activity other than the development and promotion of its product. Furthermore, by Applicant's development of its free media software, Applicant is in direct competition with the software manufacturers that comprise the internet media industry that Applicant is claiming to promote. As a result of Applicant's sole activity of developing and promoting its software product, Applicant has established that its activities are directed to promoting its own interests and not the common business interests of the whole internet media industry and the manufacturers that create devices for accessing the media. Therefore, Applicant does not promote a common business interest as required under section 501(c)(6) of the Code and section 1.501(c)(6)-1 of the regulations.

Furthermore, under section 501(c)(6) of the Code and section 1.501(c)(6)-1 of the regulations, a tax-exempt business league's net earnings must not inure to the benefit of any private shareholder or individual. Pursuant to Rev. Rul. 67-251, 1967-2 C.B. 196, financial aid to members is a form of inurement and would preclude an organization from being recognized as a tax-exempt business league under section 501(c)(6) of the Code. Applicant has stated that it intends to engage in grant-making activities, "likely in the form of student scholarships for attendance at free software developer conferences or general free and open software conferences whether hosted by [Applicant] or other organizations." Although the Applicant has not provided any grant applications for review, grants to individuals would violate the prohibition against inurement. As such, Applicant would not comply with the prohibition against inurement as required under section 501(c)(6) of the Code and section 1.501(c)(6)-1 of the regulations for an organization seeking recognition as a tax-exempt business league if it made such grants.

Based upon the above, we have made a determination that Applicant fails to meet the requirements necessary to be recognized as a tax-exempt businesses league under section 501(c)(6) of the Code. Applicant has the right to file a protest if it believes this determination is incorrect. To protest, Applicant must submit a statement of its views and fully explain its reasoning. Applicant must submit the statement, signed by one of its officers, within 30 days from the date of this letter. We will consider Applicant's statement and decide if the information affects our determination.

Applicant's protest statement should be accompanied by the following declaration:

*Under penalties of perjury, I declare that I have examined this protest statement, including accompanying documents, and, to the best of my knowledge and belief, the statement contains all the relevant facts, and such facts are true, correct, and complete.*

Applicant also has a right to request a conference to discuss its protest. This request should be made when Applicant files its protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent Applicant. If Applicant wants representation during the conference procedures, it must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if it has not already done so. For more information about representation, see Publication 947, *Practice before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at [www.irs.gov](http://www.irs.gov), Forms and Publications.

If Applicant does not intend to protest this determination, it need not take any further action. If we do not hear from Applicant within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848, and any supporting documents to this address:

Internal Revenue Service  
TE/GE (SE:T:EO:RA:T:3)  
1111 Constitution Ave, N.W.  
Washington, DC 20224

Applicant may also fax its statement using the fax number shown in the heading of this letter. If Applicant faxes its statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, you may contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Robert Choi  
Director, Exempt Organizations  
Rulings & Agreements